

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SALEM HOSPITAL CORPORATION a/k/a THE
MEMORIAL HOSPITAL OF SALEM COUNTY

and

Case 04-CA-097635

HEALTH PROFESSIONALS AND ALLIED
EMPLOYEES (HPAE)

ORDER DENYING MOTION FOR RECONSIDERATION

On April 30, 2014, the National Labor Relations Board issued its Decision and Order in the above-titled proceeding,¹ in which it held that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally changing its dress code policy on September 4, 2012, and by failing and refusing to provide the Union with information it requested on February 11, 2013. On May 28, 2014, the Respondent filed a Motion for Reconsideration. The General Counsel thereafter filed an opposition to the motion.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Having duly considered the matter, we find that the Respondent's motion fails to establish "extraordinary circumstances" warranting reconsideration under Section 102.48(d)(1) of the Board's Rules and Regulations.

The Respondent contends that the Board, acting *sua sponte*, improperly ordered the additional remedies of reinstatement and make-whole relief in the absence of evidence that the Respondent disciplined any employees pursuant to the new dress

¹ 360 NLRB No. 95.

code. As a preliminary matter, we observe that the Board has broad remedial discretion to fashion an appropriate remedy, even in the absence of exceptions, and therefore our amending the judge's recommended remedy of our own volition here is not an extraordinary circumstance. See *Indian Hills Care Center*, 321 NLRB 144, 144 fn. 3 (1996). Regarding the Respondent's primary contention, it is within the Board's discretion to order reinstatement and make-whole remedies even when there are no identified employees who have been disciplined as a result of an employer's unlawful unilateral change. See, e.g., *Windstream Corp.*, 352 NLRB 44, 44 (2008) (ordering reinstatement and make-whole relief in the event that any unit employee had been terminated as a result of employer's unlawful unilateral change), reaffirmed and incorporated by reference 355 NLRB 406, 406 (2010); *Uniserv*, 351 NLRB 1361, 1362 (2007) (ordering reinstatement and make-whole relief for unnamed unit employees who had been discharged and/or suffered loss of earnings and other benefits as a result of the respondent's unlawful unilateral changes). In any event, if, as the Respondent claims, no employees were disciplined under the new dress code, the challenged aspects of the remedy will be moot.

The Respondent also argues that the record does not support the Board's finding that the new dress code was an unlawful unilateral change insofar as it contained a new disciplinary process. We disagree. The finding is fully supported by the record and the judge's factual findings, and is explained in detail in the decision. See *Memorial Hospital of Salem County*, 360 NLRB No. 95, slip op. at 2-3 (2014).

Accordingly, we find that the Respondent has failed to establish any "extraordinary circumstances" warranting reconsideration of our earlier decision.

IT IS ORDERED, therefore, that the Respondent's motion is denied.

Dated, Washington, D.C., July 23, 2014.

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Nancy Schiffer, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD